



## City of Flagstaff, Arizona

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### West Street and Arrowhead Avenue Phase III Improvements Project

### CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES

PROJECT NO. 03-10020

Agreement No. 2014-77

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## CITY OF FLAGSTAFF, ARIZONA

### West Street and Arrowhead Avenue Phase III Improvements Project

### CONSTRUCTION MANAGER AT RISK

### CONSTRUCTION SERVICES AGREEMENT

PROJECT No. 03-10020; Agreement No. 2014-77

This Construction Services Agreement ("Agreement"), is made and entered into by and between the City of Flagstaff, an Arizona municipal corporation ("City"), and Hunter Contracting Company ("Construction Manager at Risk" or CM@Risk) on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

#### RECITALS

- A. The City is authorized and empowered by provisions of the City Charter to execute agreements for construction services.
- B. The City intends to construct the West Street and Arrowhead Phase III Improvements as more fully described in Exhibit "A" attached ("Project").
- C. To undertake the construction administration of the Project the City has entered into a separate agreement with Peak Engineering, Inc. ("Design Professional.")
- D. CM@Risk has represented to the City that it has the ability to provide construction services for the Project, and based on this representation, the City hereby engages CM@Risk to provide these services and construct the Project.
- E. Agreement #2014-77 has been executed previously between the City and CM@Risk to perform design phase services for the Project. Those services may continue during the duration of this Agreement.

**NOW THEREFORE**, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and CM@Risk as follows:

#### Article 1 - Definitions

"Agreement" - This written document signed by the City and CM@Risk covering the construction phase of the Project, and including other documents itemized and referenced in, or attached to, and made part of this Agreement.

"Change Directive" - A written order prepared and signed by the City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

"Change Order" - A type of Contract amendment issued after execution of the Contract Documents or future GMP Amendments signed by the City and CM@Risk, agreeing to changes to a GMP, for substantial unanticipated alterations in the character of Work. The Change Order shall state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Agreement terms.

"The City ("Owner" or "OWNER") - The City of Flagstaff, a municipal corporation, with whom CM@Risk has entered into this Agreement and for whom the services are to be provided pursuant to said Contact. Regulatory activities handled by the City of Flagstaff Community Development, Fire and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

"City's Representative" - The person designated in Subsection 8.3.1.2.

"City's Senior Representative" - The person designated in Subsection 8.3.1.1.

"CM@Risk" - The firm selected by the City to provide construction services as detailed in this Agreement.

"CM@Risk's Contingency" - A fund to cover cost growth during the Project used at the discretion of CM@Risk usually for costs that result from Project circumstances. The amount of CM@Risk's Contingency shall be negotiated as a separate line item in each GMP package. Use and management of CM@Risk's Contingency is described in Subsection 5.3.1.

"CM@Risk's Representative" - The person designated in Subsection 8.3.2.2.

"CM@Risk's Senior Representative" - The person designated in Subsection 8.3.2.1.

"Construction Documents" - Certain plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements or dated plans and specifications specifically identified as the "Construction Documents" herein or in an Exhibit or Addendum which is attached hereto.

"Construction Fee" - CM@Risk's administrative costs, home office overhead, and profit as applicable to this Project whether at CM@Risk's principal or branch offices.

"Contract Documents" - The following items and documents in descending order of precedence executed by the City and CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

"Contract Price" - The amount or amounts set forth in Article 5.

"Contract Time" - The days, as set forth in Article 4, the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work, subject to Winter Shutdown.

"Cost of the Work" - The direct costs necessarily incurred by CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include CM@Risk's Construction Fee, General Conditions Costs, and taxes.

"Critical Path Method" - A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities which represent the longest total time required to complete the Project. Delay in completion of the identified activities shall cause a delay in achieving Substantial Completion.

"Day(s)" - Calendar days unless otherwise specifically noted in the Contract Documents.

“Design Phase Contract” - The agreement between the City and CM@Risk for Services provided by CM@Risk during the design phase which may include the following: design recommendations, Project scheduling, constructability reviews, alternate systems evaluation, cost estimate, Minority Business Enterprise/Woman’s Business Enterprise/Small Business Enterprise (**“MBE/WBE/SBE”**) utilization, subcontractor bid phase services, GMP preparation and other services set forth in this Agreement or reasonably inferable therefrom.

“Design Professional” - A qualified, licensed design professional who furnishes, design, construction documents, and/or construction administration services required for the Project.

“Differing Site Conditions” - Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Completion” - 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner’s Project specifications and Owner training/start up activities.

“Float” - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“General Conditions Costs” - Includes, but is not limited to the following types of costs for CM@Risk during the construction phase: (i) payroll costs for Project manager or CM@Risk for work conducted at the Site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the Site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities setup solely for this Project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the Site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of CM@Risk or Subcontractors.

“Guaranteed Maximum Price” or “GMP” - The sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@Risk’s Contingency.

“GMP Plans and Specifications” - The plans and specifications upon which the Guaranteed Maximum Price proposal is based.

“Legal Requirements” - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Notice to Proceed” or “NTP” - The directive issued by the City, authorizing CM@Risk to start Work.

“Opening Physical Conditions” – The current physical conditions present on the Site as jointly documented by an inspection of the Site by City and CM@R at the Pre-construction Conference.

“Owner’s Contingency” - A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen Site conditions. The amount of the Owner’s contingency shall be set solely by the Owner and shall be in addition to the Project costs included in CM@Risk’s GMP packages. Use and management of the Owner’s contingency is described in Section 5.3.2.

"Performance Period" - The period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Master Schedule.

"Payment Request" - The City form used by CM@Risk to request progress payments for Work in accordance with Article 7.

"Pre-construction Conference" - A Conference held between City and CM@Risk prior to the commencement of any Work, as scheduled by the City's Representative or designee.

"Product Data" - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CM@Risk to illustrate materials or equipment for some portion of the Work.

"Project" - The work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit "A" attached.

"Project Record Documents" - The documents created pursuant to Section 2.10.

"Samples" - Physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work shall be evaluated.

"Schedule of Values" - A statement furnished by CM@Risk to the City's Representative for approval, reflecting the portions of the GMP allotted for the various parts of the work and used as the basis for evaluating CM@Risk's applications for progress payments.

"Shop Drawings" - Drawings, diagrams, schedules and other data specially prepared for the Work by CM@Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Site" - Land or premises on which the Project is located.

"Specifications" - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

"Subcontractor" - An individual or firm having a direct Agreement with CM@Risk or any other individual or firm having an Agreement with the aforesaid Contractors at any tier, who undertakes to perform a part of the construction phase Work for which CM@Risk is responsible.

"Submittals" - Documents and/or things that may be produced or presented by one party for consideration review or such other actions as may be required by this Agreement by another party, entity or person. Examples of Submittals include, but are not limited to, preliminary or evolving drafts, product data samples, etc.

"Substantial Completion" - The established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or its representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review.

"Supplier" - A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct agreement with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

"Winter Shutdown" – The period of time typically including December through March during which no Work will be performed by any person or entity (including but not limited to the CM@Risk) on the Project and CM@Risk shall shutdown, properly insulate and shelter the Project in a safe and workmanlike manner pursuant to local, state and federal laws. Although December through March is typically the time frame, the City reserves the right to initiate and terminate a Winter Shutdown at the City's sole discretion in the event of adverse weather conditions. A Winter Shutdown may be declared by the City despite delays, *for any reason*, on the Project.

"Work" - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## **Article 2 - CM@Risk's Services and Responsibilities**

**2.0** CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work shall be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Flagstaff, Arizona. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents. It is not required that the services be performed in the sequence in which they are described. In addition, the CM@Risk is aware that this Project was previously awarded to a separate contractor in 2013, under a separate bid and that said separate contractor is no longer on the Project which is in need of completion. AS A RESULT, THE CM@RISK HEREBY ACKNOWLEDGES CITY'S FULL DISCLOSURE THAT THE PROJECT MAY INVOLVE ADDITIONAL CHALLENGES AND THAT CM@RISK HAS HAD THE OPPORTUNITY TO FULLY REVIEW ANY AND ALL RELEVANT INFORMATION REGARDING THE CURRENT PHYSICAL CONDITIONS PRESENT ON THE SITE OF THE PROJECT, AND THAT THE CM@RISK WILL HOLD THE CITY HARMLESS FROM, AND NOT MAKE ANY CLAIMS AGAINST CITY ARISING FROM OR RELATED TO THE OPENING PHYSICAL CONDITIONS OF THE SITE AND/OR PROJECT.

### **2.1 General Services**

**2.1.1.** CM@Risk's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with the City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of the City.

### **2.2 Government Approvals and Permits**

**2.2.1** Unless otherwise provided, CM@Risk shall obtain all applicable and/or necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. CM@Risk is specifically reminded of the need to obtain the applicable and/or necessary environmental permits or file the applicable and/or necessary environmental notices.

**2.2.2** Copies of the permits and notices listed in Subsection 2.2.1 above must be provided to the

City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

**2.2.3** City shall be responsible for City of Flagstaff review and permit(s) fees for building and demolition permits. City shall also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.

**2.2.4** CM@Risk shall be responsible for all other permits and review fees not specifically listed in Subsection 2.2.3 above.

**2.2.5** CM@Risk is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are CM@Risk's responsibility.

### **2.3 Pre-construction Conference**

**2.3.1** Prior to the commencement of any Work, the City's Representative or designee shall schedule and conduct a Preconstruction Conference. At the Pre-construction Conference, City and CM@R shall document the Opening Physical Conditions of the Site as jointly documented by an inspection of the Site by City and CM@R at the Pre-Construction.

**2.3.2** The purpose of this conference is to establish a working relationship between CM@Risk, utility firms, and various City agencies. The agenda shall include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved in the course of construction.

**2.3.3** The Notice to Proceed date shall be concurred with by the parties or set by the City at the Preconstruction Conference. After the meeting and upon receipt of a signed Agreement and delivery of the required bonds and insurance in a City approved format, a Notice to Proceed letter shall be issued confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion shall be listed and/or as set forth in Article 1 herein. Failure by CM@Risk to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it shall not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

**2.3.4** CM@Risk shall provide a Schedule of Values based on the categories used in the buy out of the Work but not greater than the approved GMP and identifying CM@Risk's Contingency. The Schedule of Values shall subdivide the Work into all items comprising the Work. The Schedule of Values shall contain sufficient detail to identify each individual element of the Work and shall relate to the approved GMP Schedule. The Schedule of Values shall be subject to approval by the City's representative.

**2.3.5** Minimum attendance by CM@Risk shall be CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and CM@Risk's safety officer.

### **2.4 Control of the Work**

**2.4.1** Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate Contractor, CM@Risk shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@Risk to complete the Work consistent with



the Contract Documents.

- 2.4.2** CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.4.3** CM@Risk's Representative or CM@Risk's Superintendent shall be present at the Site at all times that construction activities are taking place.
- 2.4.3.1** All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.
- 2.4.3.2** In the event of noncompliance with this Section, the City may require CM@Risk to stop or suspend the Work in whole or in part.
- 2.4.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is CM@Risk's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.
- 2.4.5** Before ordering materials or doing work, CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation shall be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences which may be found shall be submitted to the City for resolution before proceeding with the Work.
- 2.4.6** CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City at once.
- 2.4.7** CM@Risk shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.
- 2.4.8** Any person employed by CM@Risk or any Subcontractor who, in the opinion of the City, does not perform his or her work in a proper, skillful, and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. CM@Risk or Subcontractor shall hold the City harmless from damages or claims which may occur in the enforcement of this Section.
- 2.4.9** CM@Risk assumes responsibility to the City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.4.10** CM@Risk shall coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

## **2.5 Control of the Work Site**

- 2.5.1** Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit the City to occupy the Project or a portion of the Project for its intended use.
- 2.5.2** CM@Risk shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Arizona Department of Environmental Quality rules and regulations.
- 2.5.3** CM@Risk shall maintain ADA, ADAAG and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA, ADAAG and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.5.4** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of CM@Risk.

## **2.6 Shop Drawings, Product Data and Samples**

- 2.6.1** Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which Submittals are required, the way CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.6.2** CM@Risk shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar Submittals required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit "B" as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by CM@Risk, which are not required by the Contract Documents, may be returned without action.
- 2.6.3** CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective submittal has been approved by the City or City's designee. Such Work shall be in accordance with approved Submittals.
- 2.6.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar Submittals, CM@Risk represents that CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or shall do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.
- 2.6.5** CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar Submittals unless CM@Risk has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. CM@Risk shall not be relieved of responsibility for errors or omissions in Shop

Drawings, Product Data, Samples, or similar Submittals by the City's approval thereof.

- 2.6.6** CM@Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions other than those requested by the City on previous Submittals.
- 2.6.7** Informational Submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- 2.6.8** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **2.7 Quality Control, Testing and Inspection**

- 2.7.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.
- 2.7.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.
- 2.7.3** The procedures and methods used to sample and test material shall be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with the most recently adopted edition of the City of Flagstaff Engineering Division Design and Construction Standards and Specifications.
- 2.7.4** The City shall select a City or Independent Testing Laboratory and shall pay for initial City Acceptance Testing.
  - 2.7.4.1** When the first and/or subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and the cost of all tests, except the first test, shall be paid for by CM@Risk. CM@Risk's Contingency cannot be utilized for the cost of re-testing.
  - 2.7.4.2** When the first and/or subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
- 2.7.5** CM@Risk shall cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.7.6** At the option of the City, materials may be approved at the source of supply before delivery is started.
- 2.7.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by CM@Risk, unless otherwise provided in the Contract Documents.
- 2.7.8** CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of CM@Risk and paid by CM@Risk.

## **2.8 Trade Names and Substitutions**

- 2.8.1** Unless indicated that no substitutions are permitted, CM@Risk may request a substitution or alternative to Contract Document references to equipment, materials or patented processes by

manufacturer, trade name, make or catalog number, subject to the following:

- 2.8.2** The substitution shall be submitted by CM@Risk in writing to the City.
- 2.8.3** CM@Risk shall certify that the substitution shall perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- 2.8.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.8.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.
- 2.8.6** CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.8.7** The City shall make the final decision and shall notify CM@Risk in writing as to whether the substitution has been accepted or rejected.
- 2.8.8** If the City does not respond in a timely manner, CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution shall be considered rejected.
- 2.9 Project Record Documents**
- 2.9.1** During the construction period, CM@Risk shall maintain at the Site a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.
- 2.9.1.1** CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. CM@Risk shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
- Dimensional changes to the drawings.
  - Revisions to details shown on drawings
  - Depths of foundations below first floor
  - Locations and depths of underground utilities
  - Revisions to routing of piping and conduits.
  - Revisions to electrical circuitry.
  - Actual equipment locations.
  - Duct size and routing.
  - Locations of concealed internal utilities.
  - Changes made by Change Order, Change Order Directive, Field Order, Record of Field Change, ASI's and RFI's.
  - Addenda and other details not on original Agreement Drawings.
- 2.9.1.2** CM@Risk shall mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.
- 2.9.1.3** CM@Risk shall mark Project Record Drawings sets with red erasable colored pencil.

- 2.9.1.4** CM@Risk shall note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- 2.9.1.5** CM@Risk shall, as a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.
- 2.9.2** Upon receipt of the reviewed Project Record Drawings from the City, CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:
  - 2.9.2.1** CM@Risk shall provide a complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with City of Flagstaff CADD technology. The Design Professional shall provide files of the original Construction Documents to CM@Risk for the use of preparing these final Project Record Drawings or CM@Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."
  - 2.9.2.2** CM@Risk shall provide a complete set of reproducible mylars from the final AutoCAD drawings.
  - 2.9.2.3** CM@Risk shall provide the original copy of the Project Record Drawings (redline mark-ups).
- 2.10** Project Safety
  - 2.10.1** CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
  - 2.10.2** CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
  - 2.10.3** CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
  - 2.10.4** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.
  - 2.10.5** CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
  - 2.10.6** CM@Risk shall immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
  - 2.10.7** CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety

precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

**2.11 Warranty**

**2.11.1** CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

**2.11.2** CM@Risk's warranty obligation shall be for one (1) year, except for such greater period as may be required by the technical specifications.

**2.11.3** Nothing in this warranty is intended to limit any manufacturer's warranty which provides The City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk shall provide City with all manufacturers' warranties upon Substantial Completion.

**2.11.4** Nothing in this warranty is intended to limit any other remedy at law that may be available to the City.

**2.12 Correction of Defective Work**

**2.12.1** CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents, or as may be available to the City by law. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

**2.12.2** During the performance of the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City or as discovered by CM@Risk. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the performance of the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City shall commence correction of such nonconforming Work with its own forces.

**2.12.3** CM@Risk shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 and/or Section 2.13.1 above, within seven (7) days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within such seven-day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City shall commence correction of such nonconforming Work with its own forces. 2.12.4 If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.

**2.12.4** For nonconforming Work that creates an emergency requiring an immediate response, CM@Risk shall respond and initiate corrections within twenty-four hours.

**2.12.5** The one year period referenced in Subsection 2.13.1 above applies only to CM@Risk's obligation to correct nonconforming Work relative to the warranty set forth in that section and

is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding CM@Risk's other obligations under the Contract Documents or as may be allowed by law.

### **Article 3 - The City's Services and Responsibilities**

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#### **3.1 Duty to Cooperate.**

**3.1.1** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

**3.1.2** City shall furnish at CM@Risk's request, at no cost to CM@Risk, a CADD file of the Construction Documents in AutoCAD format compatible with the City of Flagstaff CADD technology.

#### **3.2 The City's Representative**

**3.2.1** City's Representative shall be responsible for providing City (as defined in Article I) supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.

**3.2.2** City's Representative shall also provide CM@Risk with prompt notice if City's Representative observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

**3.2.3** The City may utilize field inspectors to assist the City's Representative during construction in observing performance of CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory department.

**3.2.3.1** The field inspector shall be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

**3.2.3.2** The field inspector shall not be authorized to issue instructions contrary to the Construction Documents or to act as foreman for CM@Risk.

**3.2.3.3** The field inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

**3.2.3.4** The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for CM@Risk's failure to perform the work in accordance with Contract Documents.

#### **3.3 Design Professional Services**

**3.3.1** The City may contract separately with one or more Design Professionals to provide construction administration of the Project. The Design Professional's Agreement as well as other firms hired by the City shall be available for review by CM@Risk. CM@Risk shall not have any right however, to limit or restrict any contract provisions and/or modifications that are mutually acceptable to the City and Design Professional.

- 3.3.2** The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.
- 3.3.2.1** Provide oversight of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.
- 3.3.2.2** Conduct Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional shall keep the City informed of progress of the Work and any noted defects and deficiencies of the Work, and shall endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction, which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.7.
- 3.3.2.3** Review and recommend approval of Payment Requests.
- 3.3.2.4** Review and approve or take other appropriate action upon CM@Risk's Submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.6.
- 3.3.2.5** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.6** Prepare Change Orders, and may authorize minor changes in the Work as provided in Section 6.6.1.
- 3.3.2.7** Conduct inspections to determine Substantial Completion and Final Acceptance.
- 3.3.2.8** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by CM@Risk.

**3.4 City's Separate Contractors.**

City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents.

**3.5 Permit Review and Inspections**

- 3.5.1** If requested by CM@Risk, the City's Representative shall provide assistance and guidance in obtaining necessary reviews, permits and inspections, however, the responsibility for obtaining the necessary reviews, permits and inspections remains with CM@Risk.
- 3.5.2** Regulating agencies of the City, such as Community Development, Fire, Planning, Building Inspection, Environmental Services, and Engineering Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.



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## Article 4 - Contract Time

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### 4.0 Contract Time.

- 4.0.1** Contract Time shall start with the Notice to Proceed ("NTP") with construction services and shall end with Substantial Completion.
- 4.0.2** Where there is more than one GMP, each GMP shall establish a separate NTP date and a Performance Period. The Performance Periods for individual GMPs may be sequential or concurrent as established in the individual Notices to Proceed. The Performance Period for the GMP under this Agreement shall be **180 calendar days** starting with the NTP.
- 4.0.3** CM@Risk agrees that it shall commence timely performance of the Work and shall achieve substantial completion within the Performance Periods and Contract Time.
- 4.0.4** All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.
- 4.0.5** Time is of the essence, for times and time matters set forth in Article 4 and the rest of this Agreement.

Pursuant to Section 9.3 below, if, in the sole discretion of the Capital Improvements Department of the City of Flagstaff, the Project is not at Substantial Completion prior to the advent of adverse weather conditions, a Winter Shutdown shall occur during which no Work will be performed by any person or entity (including but not limited to the CM@Risk) on the Project and CM@Risk shall shutdown, properly insulate and shelter the Project in a safe and workmanlike manner pursuant to local, state and federal laws. Although December through March is typically the time frame, the City reserves the right to initiate and terminate a Winter Shutdown at the City's sole discretion in the event of adverse weather conditions. A Winter Shutdown may be declared by the City despite delays, *for any reason*, on the Project.

### 4.1 Substantial Completion

- 4.1.1** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter or as may be mutually agreed by the parties in writing. Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed.
- 4.1.2** Prior to notifying the City in accordance to Section 4.1.3 below, CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of CM@Risk to complete all Work in accordance *with the Contract Documents*.
- 4.1.3** CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4** Within five (5) days of City's receipt of CM@Risk's notice, the City and CM@Risk shall jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that shall set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the

Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

- 4.1.6** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 4.1.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy shall not interfere with CM@Risk's completion of the remaining Work.

## **4.2 Final Completion.**

Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM@Risk shall jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 4.1.5. The City shall issue a Final Completion Letter and payment pursuant to Section 7.5.

## **4.3 Liquidated Damages**

- 4.3.1** CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, the City shall suffer damages, which are difficult to determine and accurately specify. CM@Risk agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City \$\_\_\_\_(to be determined on an agreement by agreement basis) per day as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

- 4.3.2** CM@Risk understands that if Final Completion is not attained within the Contract Time as adjusted, the City shall suffer damages, which are difficult to determine and accurately specify. CM@Risk agrees that if Final Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City \$\_\_\_\_(to be determined on an agreement by agreement basis) per day as liquidated damages for each Day that Final Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

## **4.4 Project Master Schedule**

- 4.4.1** The Project Master Schedule approved as part of a GMP shall be updated and maintained throughout the Work by CM@Risk.
- 4.4.2** The Project Master Schedule shall be revised by CM@Risk as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.
- 4.4.3** Updated Project Master Schedules shall be submitted monthly by CM@Risk to the City as part of the Payment Request.
- 4.4.3.1** CM@Risk shall provide City with a monthly status report with each Project Master Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to

jeopardize ability to complete the Work as presented in the GMP and within the Contract Time.

- 4.4.3.2** With each schedule submittal CM@Risk shall include a transmittal letter including the following:
- Description of problem tasks (referenced to field instructions, requests for information (“RFI’s”), as appropriate.
  - Current and anticipated delays including:
    - Cause of the delay
    - Corrective action and schedule adjustments to correct the delay
    - Known or potential impact of the delay on other activities, milestones, and/or the date of Substantial Completion
  - Changes in construction sequence
  - Pending items and status thereof including but not limited to:
    - Time Extension requests
    - Other items
  - Substantial Completion date status:
    - If ahead of schedule, the number of calendar days ahead
    - If behind schedule, the number of calendar days behind
  - Other project or scheduling concerns
- 4.4.4** City’s review of and response to the Project Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving CM@Risk of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 4.4.5** The Project Master Schedule shall include a Critical Path Method (“CPM”) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 4.4.5.1** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.4.5.2** The CPM diagram schedule shall indicate all relationships between activities.
- 4.4.5.3** The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 4.4.5.4** The CPM diagram schedule shall be based upon activities, which would coincide with the Schedule of Values.
- 4.4.5.5** The CPM diagram schedule shall show all Submittals associated with each work activity and the review time for each submittal.
- 4.4.5.6** The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with CM@Risk activities.
- 4.4.5.7** The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based

on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

- 4.4.6 The Project Master Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.4.7 Float time shall be as prescribed below:
  - 4.4.7.1 The total Float within the overall schedule, is not for the exclusive use of either the City or CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.
  - 4.4.7.2 CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions shall be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date and then only if any such extensions or damages are shown to be justified under the Contract Documents.
  - 4.4.7.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path Submittals returned in less time than allowed by the Agreement, approval of substitution requests and credit changes which result in savings of time to CM@Risk, etc.). In such an event, CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

## **Article 5- Contract Price**

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- 5.0 CM@Risk agrees at his own cost and expense, to completely construct and install all Work and materials as called for by this Agreement, free and clear of all claims, liens and charges whatsoever, in the manner and under the conditions specified in the Contract Documents, within the time or times stated in the approved GMP.
- 5.1 **Contract Price**
  - 5.1.1 The Contract Price shall be as approved in the Guaranteed Maximum Price Proposal attached as Exhibit "B" and an amount of **\$1,599,013.95** with an additional **\$105,949.00** allowed for Owner's Contingency.
  - 5.1.2 The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
  - 5.1.3 The General Conditions Costs and the Construction Fee are firm fixed lump sums delineated in the GMP.
  - 5.1.4 Taxes are deemed to include all sales, use consumer and other taxes, which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective, or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.
- 5.2 **Guaranteed Maximum Price**
  - 5.2.1 The Guaranteed Maximum Price is composed of the maximum Cost of the Work; the Construction Fee; General Conditions Costs; taxes; and, CM@Risk's contingency all of which are not-to-exceed cost reimbursable or lump sum amounts defined in Articles 5.1 and 5.3. CM@Risk is at risk to cover any additional Project costs. If the Cost of Work amount, set forth in the GMP, is in excess of the actual Cost of Work and/or CM@Risk's Contingency, said amount by which

the Cost of Work set forth in the GMP is in excess of the actual Cost of Work and/or CM@Risk's Contingency, shall revert to the City.

**5.2.2** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.

**5.2.3** GMP amendments are cumulative except for CM@Risk's Contingency. The amount of CM@Risk's Contingency for each GMP shall be negotiated separately.

**5.2.4** If the GMP requires an adjustment due to changes in the scope of the Work the cost of such changes is determined subject to Article 6. The markups that may be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

### **5.3 Contingencies**

**5.3.1** CM@Risk's Contingency is an amount CM@Risk may use at its sole discretion for, an increase in the Cost of Work, and may use for increases in General Conditions Costs with written approval of the City. CM@Risk's Contingency is assumed to be a direct Project cost and all applicable markups shall be applied at the time of GMP submission.

**5.3.1.1** When CM@Risk utilizes CM@Risk's Contingency funds, CM@Risk shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from CM@Risk's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If CM@Risk's contingency funds are used for a new line item that was not given with the original Schedule of Values, these shall be so indicated.

**5.3.2** Owner's Contingency are funds to be used at the sole discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen Site conditions. Owner's Contingency shall be added to the GMP amount provided by CM@Risk, the sum of which shall be the full Contract Price for construction. At the time that Owner's Contingency is used the appropriate markups shall be applied.

### **5.4 Open Book.**

CM@Risk shall submit to the City upon request all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this Section shall be included in all Agreements between CM@Risk and its Subcontractors and Consultants. The City may exercise its rights under this Section as often as reasonably necessary in the City's sole judgment to assure the City has a complete and accurate understanding of all Project costs.

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## **Article 6 - Changes to the Contract Price and Time**

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### **6.0 Delays to the Work**

**6.0.1** If CM@Risk is delayed in the performance of the Work that shall cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own, or, those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order. However, the City and the CM@R must agree on the determination of whether acts, omissions, conditions, events, or circumstances are actually beyond the CM@Rs control and/or whether they are due to no fault of the CM@R, or those for whom CM@Risk is responsible; if the City and the CM@R do not agree, then an independent third party, selected by both parties, shall make the determination of whether acts, omissions, conditions, events, or circumstances are

actually beyond the CM@Rs control and/or whether they are due to no fault of the CM@R, or those for whom CM@Risk is responsible.

- 6.0.2** CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work within three (3) days of the occurrence of the delay. In the case of a continuing delay only one request is necessary.
- 6.0.3** By way of example, events that shall entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate Contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.0.4** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion. All terms, conditions and definitions necessary for the application of this paragraph shall be as set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.
- 6.0.5** It is understood, however, that permitting CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- 6.0.6** In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God and shall not be adjusted absent a showing of actual damage.

## **6.1 Differing Site Conditions**

- 6.1.1** If CM@Risk encounters a Differing Site Condition, CM@Risk shall be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are actually adversely impacted by the Differing Site Condition.
- 6.1.2** Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **6.2 Errors, Discrepancies and Omissions**

- 6.2.1** If CM@Risk observes errors, discrepancies or omissions in the Contract Documents, CM@Risk shall promptly notify the Design Professional and request clarification.
- 6.2.2** If CM@Risk proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, CM@Risk does so at its own risk. Adjustments involving such circumstances made by CM@Risk prior to clarification by the Design Professional shall be at CM@Risk's risk.

### **6.3 The City Requested Change in Work**

**6.3.1** The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

**6.3.2** Such alterations and changes shall not invalidate this Agreement nor release the surety and CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

**6.3.3** The City shall request a proposal for a change in Work from CM@Risk, and an adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

**6.4 Legal Requirements.** The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of their Agreement or the date of the GMP, affecting the performance of the Work

### **6.5 Change Directives and Change Orders**

**6.5.1** City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive if any adjustments are appropriate. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

**6.5.2** All changes in Work authorized by Change Directives and/or Change Orders shall be performed under the conditions of the Contract Documents.

### **6.6 Minor Changes in the Work**

**6.6.1** The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. CM@Risk shall carry out such written orders promptly.

**6.6.2** CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.

**6.6.3** Minor changes in Work shall not involve an adjustment in the Contract Price and/or Contract Times.

### **6.7 Contract Price Adjustments**

**6.7.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**6.7.1.1** Unit prices set forth in this Agreement or as subsequently agreed to between the parties;

**6.7.1.2** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; and

**6.7.1.3** Costs, fees and any other markups.

**6.7.2** The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit "B".

- 6.7.3** If an increase or decrease cannot be agreed to as set forth in Sections 6.7.1.1 through 6.7.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in their Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.7.4** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices shall cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.7.5** If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof.
- 6.7.5.1** As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.7.5.2** If the parties are unable to agree and City expects CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.
- 6.7.6 Emergencies.**
- In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

## **Article 7- Procedure for Payment**

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- 7.0** For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to the City's satisfaction, the City agrees to pay CM@Risk the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and CM@Risk's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific Work under this Agreement shall be made in accordance with payment provisions detailed below.
- 7.1 GMP Payment Request**
- 7.1.1** At the pre-construction conference prescribed in Section 2.4, CM@Risk shall submit for City's review and approval a Schedule of Values. The Schedule of Values shall serve as the basis for monthly progress payments made to CM@Risk throughout the Work.
- 7.1.2** At least five (5) working days prior to the date established for a Payment Request, CM@Risk shall submit an updated Project Master Schedule and meet with the City's Representative to review the progress of the Work as it shall be reflected on the Payment Request.
- 7.1.3** The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in



the Payment Request, and that title to all Work shall pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

**7.1.4** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.

**7.1.4.1** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

**7.1.4.2** For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Coconino County or other Sites as may be approved and be accessible for City's inspection. CM@Risk must establish City title to such materials and equipment or otherwise protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

**7.1.4.3** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

**7.1.5** CM@Risk shall submit to City on a monthly basis either on the first of the month for payment on the 15<sup>th</sup> or on the 19<sup>th</sup> of the month for payment on the 30<sup>th</sup> or 31<sup>st</sup>. If the payment date is on a Saturday, payment shall be on Friday. If the payment date is on a Sunday, payment shall be on Monday.

## **7.2 Payment of GMP**

**7.2.1** City shall make payment in accordance with A.R.S. §34-607. Payment shall be made no later than fourteen (14) days after the Payment Request is certified and approved, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

**7.2.2** City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a Payment Request, it shall notify CM@Risk in writing within (7) days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk shall take to rectify City's concerns. CM@Risk and City shall attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

## **7.3 Retention of GMP**

**7.3.1** City shall retain ten percent (10%) of each Payment Request amount provided. When fifty percent (50%) of the Work has been completed by CM@Risk, upon request of CM@Risk, City may reduce the amount retained to five percent (5%) from CM@Risk's subsequent Payment Requests if CM@Risk's performance of Work has been satisfactory.

**7.3.2** In lieu of retention, CM@Risk may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by the State of Arizona, securities of or guaranteed by the United States of America, securities of counties, municipalities and school districts within the State of Arizona or shares of savings and loan institutions authorized to transact business in Arizona.

**7.3.2.1** CDs assigned to the City must be maintained at the City's single servicing bank, in the form of time deposit receipt accounts.

**7.3.2.2** Securities deposited in lieu of retention must be deposited into a separate account with a bank

within the State of Arizona.

- 7.3.2.3** CDs and Securities shall be assigned exclusively for the benefit of the City of Flagstaff pursuant to the City's form of Escrow Agreement. Escrow Agreement forms may be obtained from the Purchasing Department by contacting Patrick Brown, Senior Procurement Specialist.

**7.4 Substantial Completion.**

Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one-half (2.5) times the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**7.5 Final Payment**

- 7.5.1** After receipt of a final Payment Request, City shall make final payment within sixty (60) days after receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Completion Letter has been issued by the City.

- 7.5.2** At the time of submission of its final Payment Request, CM@Risk shall provide the following information:

- 7.5.2.1** An affidavit affirming that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which shall in any way affect City's interests;

- 7.5.2.2** A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

- 7.5.2.3** Consent of CM@Risk's surety, if any, to final payment.

**7.6 Payments To Subcontractors or Suppliers**

- 7.6.1** CM@Risk shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to CM@Risk. No agreement between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

- 7.6.2** If CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:

- 7.6.2.1** Hold CM@Risk in default under this Agreement;

- 7.6.2.2** Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

- 7.6.2.3** Reject all future offers to perform work for the City from CM@Risk for a period not to exceed

one (1) year from Substantial Completion date of this Project; or

**7.6.2.4** Terminate this Agreement.

**7.6.3** If CM@Risk's payment to a Subcontractor or supplier is in dispute, it shall act in compliance with A.R.S. § 32-1129.02(D) and related statutes as amended, and shall further hold the City harmless from any ensuing damages, claims or costs.

**7.6.4** Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

**7.6.5** CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

## **7.7 Record Keeping and Finance Controls**

**7.7.1** Records of CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for three (3) years after Final Completion of the Project.

**7.7.2** The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

**7.7.3** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of CM@Risk's records, the audit discloses CM@Risk has provided false, misleading, or inaccurate cost and pricing data.

**7.7.4** CM@Risk shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

**7.7.5** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's Agreements, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

## **Article 8- Claims and Disputes**

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### **8.0 Requests for Agreement Adjustments and Relief.**

**8.0.1** If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.

**8.0.2** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.

**8.0.3** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

- 8.0.4** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## **8.1 Dispute Avoidance and Resolution**

- 8.1.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.1.2** CM@Risk and City shall first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and City's Representative.
- 8.1.3** If a dispute or disagreement cannot be resolved through CM@Risk's Representative and City's Representative, CM@Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that shall assist the parties in resolving their dispute or disagreement.
- 8.1.4** Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement shall be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action shall be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

## **8.2 Duty to Continue Performance.**

Unless provided to the contrary in the Contract Documents, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and City.

## **8.3 Representatives of the Parties**

### **8.3.1 The City's Representatives**

- 8.3.1.1** City designates the individual listed below or his designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

Rick Barrett, Division/Department Head  
211 West Aspen Avenue  
Flagstaff, AZ 86001  
(928) 213-2675

- 8.3.1.2** City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

Christine Cameron, Project Manager  
211 West Aspen Avenue  
Flagstaff, AZ 86001  
(928) 213-2682

**8.3.2 CM@Risk's Representatives**

- 8.3.2.1** CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

Rob Padilla, Vice President  
701 North Cooper Road  
Gilbert, AZ 85233  
(480) 892-4932

- 8.3.2.2** CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

Terry Snyder, Senior Project Manager  
701 North Cooper Road  
Gilbert, AZ, 85233  
(480) 892-0521

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**Article 9 – Suspension and Termination**

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**9.0 City's Right to Stop Work**

- 9.0.1** City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.
- 9.0.2** CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

**9.1 Termination for Convenience**

- 9.1.1** Upon receipt of written notice from the City to CM@Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination. CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.2** If the City suspends the Work for one hundred eighty-one (181) consecutive days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such notice of termination for convenience, CM@Risk shall proceed with the following obligations:
- 9.1.3.1** Stop Work as specified in the notice.
- 9.1.3.2** Place no further subcontracts or orders.

- 9.1.3.3** Terminate all subcontracts to the extent they relate to the Work terminated. CM@Risk shall ensure that all subcontracts contain this same termination for convenience provision set forth in Section 9.1 et seq.
- 9.1.3.4** At the City's sole discretion and if requested in writing by the City, assign to the City all rights, title and interest of CM@Risk under the subcontracts subject to termination.
- 9.1.3.5** Take any action that may be necessary for the protection and preservation of the property related to this Agreement that is in the possession of CM@Risk and in which the City has or may acquire an interest.
- 9.1.4** CM@Risk shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the date of the notice of termination.
- 9.1.5** The City shall pay CM@Risk the following:
- 9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.
- 9.1.5.2** The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit, anticipated overhead, or costs arising from CM@Risk's failure to perform as required under this Agreement.
- 9.1.5.3** CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it is determined that CM@Risk would have sustained a loss on the entire Work had they been completed, CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.
- 9.1.6** CM@Risk shall maintain all records and documents for three (3) years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.7.
- 9.2 The City's Right to Perform and Terminate for Cause**
- 9.2.1** If the City provides CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and CM@Risk fails to comply in a time frame specified, the City may have work accomplished by other sources at [CM@Risk's](#) sole expense.
- 9.2.2** If CM@Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.
- 9.2.3** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM@Risk that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@Risk's receipt of such notice.
- 9.2.3.1** If CM@Risk fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CM@Risk of its intent to terminate within an additional seven (7) day period.

- 9.2.3.2** If CM@Risk, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then City may declare this Agreement terminated for default by providing written notice to CM@Risk of such declaration.
- 9.2.4** Upon declaring this Agreement terminated pursuant to Subsection 9.2.3.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@Risk hereby transfers, assigns and conveys to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5** In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, CM@Risk shall only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.2.6** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expenses shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM@Risk's default.
- 9.2.7** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

### **9.3 Maintenance During Winter Shutdown of Work; Snow Removal**

- 9.3.1** The Capital Improvement Department of the City of Flagstaff retains the right to declare a Winter Shutdown when, in the opinion of the City, it would be unreasonable to continue Work due to adverse weather conditions. The Winter Shutdown determination is at the sole discretion of the City. If Work has been suspended due to winter weather, the CM@Risk shall be responsible for maintenance and protection of the improvements and of partially completed portions of the Work until final acceptance of the project. Winter Shutdown shall be by field order, change order or original contract. If repairs and/or maintenance are needed during the Winter Shutdown, the CM@Risk is required to perform the repairs and/or maintenance within twenty-four (24) hours of notification from the City. If the needed repairs and/or maintenance are not addressed within the timeframe, the City will accomplish the repairs and/or maintenance and deduct the cost from monies due or become due to the CM@Risk.
- 9.3.2** The City shall provide snow removal operations on active traffic lanes only. All other snow removal and maintenance operations shall be the responsibility of the Contractor. All cost associated with snow removal and proper disposal shall be considered incidental to the work including repair of temporary surface improvements due to normal wear and snow removal operations.
- 9.3.3** Upon termination of the Winter Shutdown by the City, the CM@Risk shall have the right to complete the Work and the Project.
- 9.3.4** The CM@Risk shall be solely responsible for any and all costs incurred either as a direct or indirect result of a Winter Shutdown, and shall hold the City harmless from the same.

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## **Article 10 - Insurance and Bonds**

### **10.0 Insurance Requirements**

- 10.0.1** CM@Risk and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by CM@Risk, its agents, representatives, employees or Subcontractors.
- 10.0.2** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- 10.0.3** The City in no way warrants that the minimum limits contained herein are sufficient to protect CM@Risk from liabilities that might arise out of the performance of the work under this Agreement by CM@Risk, its agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.
- 10.1 Minimum Scope and Limits of Insurance.** CM@Risk shall provide coverage with limits of liability not less than those stated below:
- 10.1.1** Commercial General Liability – Occurrence Form  
Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.
- |   |                         |
|---|-------------------------|
| • General Aggregate/for this Project        | \$2,000,000/\$1,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000             |
| • Personal and Advertising Injury           | \$1,000,000             |
| • Each Occurrence                           | \$1,000,000             |
- The policy shall be endorsed to include the following additional insured language: **"The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CM@Risk".**
- 10.1.2** Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.  
Combined Single Limit ("CSL")
- |  |             |
|--|-------------|
|  | \$1,000,000 |
|--|-------------|
- The policy shall be endorsed to include the following additional insured language: **"The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CM@Risk, including automobiles owned, leased, hired or borrowed by CM@Risk".**
- 10.1.3** Worker's Compensation and Employers' Liability
- |                         |           |
|-------------------------|-----------|
| Workers' Compensation   | Statutory |
| Employers' Liability    |           |
| Each Accident           | \$100,000 |
| Disease - Each Employee | \$100,000 |
| Disease – Policy Limit  | \$500,000 |
- 10.1.4 Builders' Risk Insurance or Installation Floater** \$\_\_\_\_\_
- In an amount equal to the initial Contract Amount plus additional coverage equal to Contract Amount for all subsequent change orders.
- 10.1.4.1** The City of Flagstaff, CM@Risk, Subcontractors, Design Professional and Design Professional's consultant and any others with an insurable interest in the Work shall be **Named Insured** on the policy.
- 10.1.4.2** Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement.**



- 10.1.4.3** Coverage shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Flagstaff, has an insurable interest in the property required to be covered.
- 10.1.4.4** Coverage shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.
- 10.1.4.5** [CM@Risk](#) shall provide coverage from the time any covered property becomes the responsibility of CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation Site, or awaiting installation, whether on or off Site.
- 10.1.4.6** Coverage shall contain a **waiver of subrogation** against the City of Flagstaff.
- 10.1.4.7** CM@Risk is responsible for the payment of all policy deductibles.

**10.2 Additional Insurance Requirements.**

The policies shall include, or be endorsed to include, the following provisions:

- 10.2.1** The City, its officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by CM@Risk even if those limits of liability are in excess of those required by this Agreement.
- 10.2.2** CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 10.2.3** Coverage provided by CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 10.2.4** The policies shall contain a Waiver of Subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed by the CM@Risk for the City.

**10.3 Notice of Cancellation.**

Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to the City Purchasing Department, attention Patrick Brown, Senior Procurement Specialist, and shall be sent by certified mail, return receipt requested.

**10.4 Acceptability of Insurers.**

Insurance is to be placed with insurers who are duly licensed companies in the State of Arizona with an "A.M. Best" rating of A-7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect CM@Risk from potential insurer insolvency.

## **10.5 Verification Of Coverage**

- 10.5.1** CM@Risk shall furnish the City with Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 10.5.2** All Certificates of Insurance and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.
- 10.5.3** All Certificates of Insurance required by this Agreement shall be sent directly to City's Purchasing Department, attention Patrick Brown, Senior Procurement Specialist. The City project/contract number and project description shall be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- 10.5.4** **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must:**
- **Submit a current Certificate of Insurance (dated within fifteen (15) days of the payment request submittal) with each payment request form. The payment request shall be rejected if the Certificate of Insurance is not submitted with the payment request.**

## **10.6 Subcontractors.**

CM@Risk's Certificate(s) of Insurance shall include all Subcontractors as additional insureds under its policies. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

## **10.7 Approval.**

Any modification or variation from the insurance requirements in this Agreement shall be made by the City Attorney's Office, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

## **10.8 Bonds and Other Performance Security.**

- 10.8.1** Prior to execution of this Agreement, CM@Risk shall provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP.
- 10.8.2** Each such bond shall be executed by a surety company, or companies, holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be made payable and acceptable to the City of Flagstaff.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in Arizona, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.8.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.

- 10.8.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A-,7, or better for the prior four quarters" by the A.M. Best Company.

## **Article 11 - Indemnification**

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### **11.1 CM@Risk's Liability and Indemnification.**

- 11.1.1** To the fullest extent permitted by law, CM@Risk shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent, reckless, or intentional acts, errors, mistakes, omissions, work or services of CM@Risk, its employees, agents, or any tier of subcontractors in the performance of this Agreement. CM@Risk's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of CM@Risk or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services CM@Risk may be legally liable.

The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnity in this paragraph.

## **Article 12 – General Provisions**

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### **12.1 Contract Documents**

- 12.1.1** Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda 1,2,3,4,5 and used as the basis for the Guaranteed Maximum Price Proposal and Guaranteed Maximum Price Proposal, as accepted by the Mayor and Council per Council Minutes th day of \_\_\_\_\_, 20\_\_, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.
- 12.1.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- 12.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
- 12.1.3.1** On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.

**12.1.3.2** Specifications take precedence over Plans.

**12.1.3.3** In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Agreement, the Contract Documents take precedence over the Design Phase Agreement

**12.1.4** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**12.1.5** The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

**12.2 Amendments.**

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**12.3 Time is of the Essence.**

City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**12.4 Mutual Obligations.**

City and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

**12.5 Cooperation and Further Documentation.**

CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.

**12.6 Assignment.**

Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

**12.7 Successorship.**

CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**12.8 Third Party Beneficiary.**

Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents shall be for the sole and exclusive benefit of City and CM@Risk and not for the benefit of any other party.

## **12.9 Governing Law.**

This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed, in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

## **12.10 Severability.**

If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

## **12.11 Compliance with All Laws.**

CM@Risk will comply with all applicable Federal, State, County and City laws, regulations and policies, including but not limited to the mandatory statutory provisions in Exhibit \_\_, attached and made a part of this Agreement. CM@Risk understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.

## **12.12 Legal Requirements.**

CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

## **12.13 Construction Documents.**

It is not CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if CM@Risk recognizes that portions of the Construction Documents are at variance therewith, CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

## **12.14 Independent Contractor.**

CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.

## **12.15 The City's Right of Cancellation.**

All parties hereto acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

## **12.16 Survival.**

All warranties, representations and indemnifications by CM@Risk shall survive the completion or termination of this Agreement.

**12.17 Covenant against Contingent Fees.**

CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of City has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**12.18 No Waiver.**

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

**12.19 Notice.**

**12.19.1** Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:

Rob Padilla, Vice President  
701 North Cooper Road  
Gilbert, AZ 85233  
(480) 892-4932

to City:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: Patrick Brown, Senior Procurement Specialist  
Phone: (928) 213-2277  
Fax: (928) 213-2209

With a copy to:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: Christine Cameron, Project Manager  
Phone: (928) 213-2682  
Fax: (928) 213-2609

Design Professional:

Julie Leid, P.E., LEED A.P., Principal  
110 N. Agassiz Street  
Flagstaff, AZ, 86001  
(928) 814-8208

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

- 12.19.2** Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor:

Rob Padilla, Vice President  
701 North Cooper Road  
Gilbert, AZ 85233  
(480) 892-4932

to City:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: Patrick Brown, Senior Procurement Specialist  
Phone: (928) 213-2277  
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With copies to:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
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Phone: (928) 213-2682  
Fax: (928) 213-2609

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

## **12.20 Confidentiality of Plans and Specifications**

- 12.20.1** Any plans or specifications regarding this Project shall be for official use only. [CM@Risk](#) shall not share them with others except as required to fulfill the obligations of this Agreement with the City.
- 12.20.2** All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by CM@Risk shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of the Street Maintenance Program 2011 Project Agreement with the City of Flagstaff."

## **12.21 CM@Risk and Subcontractor Employee Security Inquiries.**

The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@Risk shall take such other measures, as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

**12.21.1** Security Inquiries. CM@Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@Risk shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CM@Risk for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CM@Risk for other work not involving the City. An employee rejected for work under this Agreement shall not be proposed to perform work under other City Agreements or engagements without City's prior approval.

**12.21.2** Criteria for Evaluating Security Inquiries. Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CM@Risk and used by CM@Risk as a factor in making its decision. Prior to such adoption, CM@Risk shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the Project, and standards used by City in evaluating its own personnel.

**12.21.3** Additional City Rights Regarding Security Inquiries. In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CM@Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@Risk's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@Risk performing work (including supervision and oversight) under this Agreement.

**12.21.4** Background and Security-Contracts and Subcontracts. CM@Risk shall include the security inquiry terms of this Section for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.

**12.21.5** Materiality of Security Inquiry Provisions. The security inquiry provisions of this Agreement, as set forth above, are material to City's entry into this Agreement and any breach thereof by CM@Risk may, at City's sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@Risk to liability for its breach of this Agreement.

## **12.22 Hazardous Materials**

**12.22.1** Unless included in the Work, if CM@Risk encounters material on the Site which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by applicable law, it shall immediately stop work and report the condition to the City.

**12.22.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by applicable law, CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. CM@Risk and the City may agree, in writing, to



continue work in non-affected areas on the Site.

**12.22.3** An extension of Contract Time may be granted in accordance with Article 6.

**12.22.4** CM@Risk shall comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

**12.23 Computer Systems.**

CM@Risk shall warrant fault-free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault-free performance shall include the manipulation of data when dates are in the 20<sup>th</sup> or 21<sup>st</sup> centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of this Agreement.

**12.24 Traffic Control.**

CM@Risk shall comply with all provisions of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.

**THE CITY OF FLAGSTAFF, ARIZONA**

West Street and Arrowhead Avenue Phase III Improvements Project

Project No.03-120020, Agreement No. 2014-77

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

CM@Risk agrees that this Agreement, as awarded, is for the stated Work and understands that payment for the total Work shall be made on the basis of the indicated amount(s), per the terms and conditions of this Agreement.

Guaranteed Maximum Price

**One million seven hundred four thousand nine hundred sixty-two dollars and ninety-five cents  
\$1,704,962.95**

THE CITY OF FLAGSTAFF, ARIZONA

HUNTER CONTRACTING COMPANY

By: \_\_\_\_\_  
Jeff Meilbeck, Interim City Manager

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Seal)

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
ATTEST: (Signature and Title)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## EXHIBIT A - PROJECT DESCRIPTION

The general Project scope includes the following work:

### **West Street and Arrowhead Avenue Phase III Improvement Project:**

The general Project scope includes the following work on West Street and Arrowhead Avenue in central Flagstaff, AZ. The attached construction plans include Phase II work that was already constructed in the summer of 2013. The majority of Phase III work will occur on Arrowhead Avenue and West Street from Route 66 to Johnson Avenue. This solicitation is only for the construction work between plan station 112+00 to STA 99+00, with minor work to be completed on West Street north of Johnson Avenue, as indicated below:

- Replacement of water main, water services, water meter boxes
- Stormdrain construction
- Asphalt pavement reconstruction
- Concrete curb/gutter/sidewalk and driveway construction
- Fire hydrant removals and replacements
- Sewer manhole removals and replacements
- Traffic signal installation at Arrowhead and Route 66
- Asphalt mill and overlay on approximately 1020 SY of Route 66
- Traffic roundabout installation at intersection of West St. and Arrowhead Ave.
- Permanent roadway striping from plan STA 139+00 to 99+00.
- Construction as-built record drawings
- Coordination with public and franchise utilities

### **Construction plans are attached for reference**

**There will be minor work north of STA 112+00 that will include the following:**

- One water service/meter installation
- Asphalt, concrete, and aggregate driveway match backs
- Keystone retaining walls
- Hydroseeding

## **EXHIBIT B – APPROVED GMP PROPOSAL**

**PROJECT #: 03-10020**

**DATE: 4/7/15**

**PROJECT NAME: West Street and Arrowhead Avenue Phase III Improvement Project**

## EXHIBIT C – TECHNICAL SPECIFICATIONS

ATTACHED